PIAGAMAS MAJU SDN BHD v. PENGARAH TANAH DAN GALIAN NEGERI SELANGOR & ANOR AND OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
ROHANA YUSUF JCA
TENGKU MAIMUN TUAN MAT JCA
[CIVIL APPEALS NO: B-01-459-10-2012,
B-01-460-10-2012 & B-01-461-10-2012]
22 JANUARY 2016

LAND LAW: *State land – Alienation by State Authority – Appeal against revocation of approval for alienation – Appeal under s. 418 of National Land Code – Whether proper – Whether should have been proceeded by way of judicial review under O. 53 of Rules of the High Court 1980 – Whether mode of appeal material – Whether changed legal position vis-a-vis power of State Authority to revoke approval for alienation*

LAND LAW: *State land – Alienation by State Authority – Appeal against revocation of approval for alienation – Premium and rent in respect of land had been paid – Whether Land Administrator obliged to issue and register document of title – Whether issuance of title subject to approval for alienation – Land approved for alienation but not registered – Whether remained state land – National Land Code, ss. 76, 80(3)*

In 1999, the Selangor State Government ('the State Government') approved in principle the alienation of 116 hectares of state land to the appellant to carry out a mixed development. Part of the land was occupied by the orang asli settlement. Pursuant to meetings between all parties involved, the appellant submitted a proposal to relocate and pay compensation to the orang asli. On 28 February 2011, the District and Land Office of Sepang ('the second respondent') *vide* a letter, notified the appellant of the State Executive Council's decision rejecting the appellant's application for alienation of the said land. The appellant appealed to the Menteri Besar Selangor. Following an agreement reached at a subsequent meeting, the appellant wrote to the member of the State Executive Council regarding its proposed settlement and compensation to the orang asli. However, *vide* a letter from the Timbalan Setiausaha Kerajaan (Pembangunan), the appellant was informed, *inter alia*, that the State Executive Council decided to revoke the approval of alienation of the said land. The State Executive Council subsequently confirmed the said decision and the decision to return the premium and rent paid by the appellant, which was received by the appellant *vide* a letter from the second respondent. The appellant, by way of originating motion filed appeals under s. 418 of the National Land Code ('NLC') against the decisions. The main issue before the High Court was whether the State Authority had the power to revoke the approval for alienation of the said land after premium and rent had been paid and accepted by the respondents. The High Court Judge

A ('HCJ') held that by virtue of s. 78(3) of the NLC, alienation of land is effective only upon registration and until such registration, the said land remained the state land although its alienation had been approved by the State Authority. The HCJ therefore found that the State Executive Council's decision in cancelling the approval for alienation was not *mala fide* and that
B the role of the first and second respondents was merely to extend the decision of the State Executive Council to the appellant and to receive the premium on behalf of the State Authority. The primary issue in the present appeal was whether the State Executive Council or the State Authority had the power to revoke an approval for alienation of state land after payment of premium
C and rent had been made by way of Form 5A and accepted by the Land Administrator.

Held (dismissing appeals with costs)
Per Alizatul Khair JCA delivering the judgment of the court:

D **(1)** The fact that the case was filed by way of an appeal under s. 418 of the NLC and not by way of judicial review under O. 53 of the Rules of the High Court 1980 did not change the legal position *vis-a-vis* the power of the State Authority to revoke a previous approval for alienation remains the same. The State Executive Council's decision to revoke the approval of alienation of the said land to the appellant was not made *mala fide* nor
E was it unreasonable. (paras 52, 70 & 71)

(2) The fact whether the premium to the land had been paid or not, did not change the established principles of law that the State Authority had the power to revoke the alienation so long the document of title and registration of the title had not been issued. (para 73)

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(3) The appellant's submission that the first and second respondents were mandatorily obliged to issue and register the document of title in the appellant's name once premium and rent in respect of the said land had been paid, was untenable. Land may only be alienated by the State
G Authority acting under s. 76 of the NLC. Only upon approval of alienation that the Registrar can act under s. 80(3) of the NLC to issue a qualified title to the successful applicant and he can only act in accordance with the decision of the State Executive Council. In this case, the State Authority had revoked the previous approval for alienation. Therefore, although the payments were made, the Land
H Administrator could no longer act under the section. (paras 74, 75 & 76)

(4) The provisions in s. 64(2) and s. 97(2) to s. 100 of the NLC were mandatory requirements and must be complied with before a state land
I reservation can be revoked or before land belonging to a registered proprietor can be forfeited. There were no such mandatory provisions found in the NLC in respect of the power of the State Authority to

revoke a previous alienation or previous approval for alienation. The reason was that by virtue of s. 78(3) of the NLC, land which has been approved for alienation but not yet registered remains, for all intents and purposes, state land. (para 78)

Bahasa Malaysia *Headnotes*

Pada 1999, Kerajaan Negeri Selangor ('Kerajaan Negeri') pada dasarnya meluluskan beri milik 116 hektar tanah Kerajaan Negeri kepada perayu untuk menjalankan pembangunan bercampur. Sebahagian tanah ini diduduki oleh orang asli. Berikutan rundingan semua pihak terlibat, perayu mengemukakan cadangan penempatan semula dan bayaran pampasan kepada orang asli yang terlibat. Pada 28 Februari 2011, Pentadbir Tanah Sepang ('responden kedua') melalui suratnya, memberitahu perayu keputusan Majlis Mesyuarat Kerajaan Negeri menolak permohonan perayu bagi beri milik tanah tersebut. Perayu merayu kepada Menteri Besar Selangor. Berikutan perjanjian yang dicapai dalam rundingan berikutnya, perayu menulis kepada ahli Majlis Mesyuarat Kerajaan Negeri mengenai penempatan semula yang dicadangkan dan pampasan kepada orang asli tersebut. Walau bagaimanapun, melalui surat oleh Timbalan Setiausaha Kerajaan (Pembangunan), perayu dimaklumkan, antara lain, mengenai keputusan Majlis Mesyuarat Kerajaan Negeri membatalkan kelulusan beri milik tanah tersebut. Majlis Mesyuarat Kerajaan Negeri kemudian mengesahkan keputusan tersebut dan keputusan memulangkan premium dan sewa yang dibayar oleh perayu, yang diterima oleh perayu melalui surat daripada responden kedua. Perayu, melalui usul pemula memfailkan rayuan-rayuan di bawah s. 418 Kanun Tanah Negara ('KTN') terhadap keputusan tersebut. Isu utama di Mahkamah Tinggi adalah sama ada Pihak Berkuasa Negeri mempunyai kuasa membatalkan kelulusan beri milik tanah tersebut setelah premium dan sewa dibayar dan diterima oleh responden-responden. Hakim Mahkamah Tinggi ('HMT') memutuskan, menurut s. 78(3) KTN, beri milik tanah berkesan hanya selepas pendaftaran dan sehingga pendaftaran, tanah tersebut kekal tanah kerajaan negeri walaupun beri milik telah diluluskan oleh Pihak Berkuasa Negeri. Oleh itu, HMT mendapati keputusan Majlis Mesyuarat Kerajaan Negeri membatalkan kelulusan beri milik bukan *mala fide* dan peranan responden pertama dan kedua hanya sekadar memanjangkan keputusan Majlis Mesyuarat Kerajaan Negeri kepada perayu dan menerima premium bagi Pihak Berkuasa Negeri. Isu utama dalam rayuan ini adalah sama ada Majlis Mesyuarat Kerajaan Negeri atau Pihak Berkuasa Negeri mempunyai kuasa membatalkan kelulusan beri milik tanah kerajaan negeri selepas pembayaran premium dan sewa dibuat melalui Borang 5A dan diterima oleh Pentadbir Tanah.

Diputuskan (menolak rayuan-rayuan dengan kos)
Oleh Alizatul Khair HMR menyampaikan penghakiman mahkamah:

(1) Fakta bahawa kes difailkan secara rayuan di bawah s. 418 KTN dan bukan secara semakan kehakiman di bawah A. 53 Kaedah-Kaedah Mahkamah Tinggi tidak mengubah kedudukan dari segi undang-undang, iaitu kuasa Pihak Berkuasa Negeri untuk membatalkan kelulusan yang diberi bagi beri milik kekal sama. Keputusan Majlis Mesyuarat Kerajaan Negeri membatalkan kelulusan bagi beri milik tanah tersebut kepada perayu tidak dibuat secara *mala fide* dan juga bukanlah tidak munasabah.

(2) Fakta sama ada premium tanah tersebut telah dibayar atau belum, tidak mengubah prinsip undang-undang matan bahawa Pihak Berkuasa Negeri mempunyai kuasa membatalkan beri milik selagi dokumen hak milik dan pendaftaran hak milik belum dikeluarkan.

(3) Hujahan perayu bahawa responden pertama dan kedua bertanggungjawab secara mandatori untuk mengeluarkan dan mendaftarkan dokumen hak milik atas nama perayu sebaik sahaja premium dan sewa berkaitan dengan tanah tersebut dibayar, tidak boleh dipertahankan. Tanah hanya boleh diberi milik oleh Pihak Berkuasa Negeri yang bertindak di bawah s. 76 KTN. Hanya selepas kelulusan beri milik, Pendaftar boleh bertindak di bawah s. 80(3) KTN untuk mengeluarkan hak milik bersyarat kepada pemohon yang berjaya dan beliau hanya boleh bertindak menurut keputusan Majlis Mesyuarat Kerajaan Negeri. Dalam kes ini, Pihak Berkuasa Negeri telah membatalkan kelulusan beri milik. Oleh itu, walaupun bayaran telah dibuat, Pentadbir Tanah tidak lagi boleh bertindak di bawah seksyen tersebut.

(4) Peruntukan-peruntukan dalam s. 64(2) dan s. 97(2) hingga s. 100 KTN adalah keperluan mandatori dan mesti dipatuhi sebelum rizab tanah kerajaan negeri boleh dibatalkan dan sebelum tanah yang dimiliki pemilik berdaftar boleh dirampas. Tiada peruntukan mandatori dalam KTN berkaitan dengan kuasa Pihak Berkuasa Negeri membatalkan beri milik terlebih dahulu atau pembatalan beri milik terlebih dahulu. Alasannya adalah menurut s. 78(3) KTN, tanah yang telah diluluskan untuk beri milik tetapi belum didaftarkan kekal, bagi setiap niat dan tujuan, tanah kerajaan negeri.

Case(s) referred to:
Attorney General v. Ryan [1980] AC 718 ***(refd)***
Government of the State of Negeri Sembilan v. Yap Chong Lan & Ors And Another Case [1984] 2 CLJ 150 FC ***(dist)***
North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Satu Lagi [2011] 4 CLJ 729 FC ***(foll)***
Pow Hing & Anor v. Registrar of Titles, Malacca [1980] 1 LNS 120 FC ***(dist)***
Suharta Development Sdn Bhd v. Ho Lik Sdn Bhd [1994] 1 CLJ 407 HC ***(refd)***

Legislation referred to:
National Land Code, ss. 64(2), 78(3), 80(3), 81(2), 97(2), 98, 99, 100, 180, 418
Rules of the High Court 1980, O. 53

For the appellant - Harpal Singh Grewal (Lua Ai Siew & Reny Rao with him); M/s Soo Thien Ming & Nashrah
For the respondents - Md Azhari Abu Hanit; State Legal Advisors Office, Selangor

[Editor's note: For the High Court judgment, please see Piagamas Maju Sdn Bhd lwn. Pengarah Tanah Dan Galian Negeri Selangor & Satu Lagi [2013] 2 CLJ 824 (affirmed).]

Reported by S Barathi

JUDGMENT

Alizatul Khair Osman JCA:

Introduction

[1] The three appeals before us arose out of the decision of the learned High Court Judge sitting in Shah Alam, who had, at the conclusion of the hearing, dismissed with costs the following Originating Motions (OM); namely:

(i) OM No. 25-63-2011

(ii) OM No. 25-64-2011

(iii) OM No. 25-86-2011

(the said OMs)

[2] At the High Court all parties agreed that the said OMs be heard together as they involved the same parties, the same issue and the same piece of land.

[3] This can be seen from the reliefs prayed for in each of the said OMS which, *inter alia*, are as follows:

(i) OM No. 25-63-2011

(a) bahawa keputusan Majlis Mesyuarat Kerajaan bertarikh 9.2.2011 yang menolak permohonan pemohon untuk mengenakan syarat-syarat kelulusan pemberian milikan tanah di kawasan penempatan orang asli di Kampung Kelingsing dan Kampung Jambu seluas lebih kurang 49.94 hektar (116 ekar) di Mukim Dengkil, Daerah Sepang diketepikan;

(b) bahawa responden kedua diarahkan untuk segera mengeluarkan dokumen hak milik berkenaan dengan tanah tersebut dan mendaftarkan pemohon sebagai pemilik berdaftar tanah tersebut.

A (ii) OM No. 25-64-2011

(a) Bahawa keputusan Majlis Mesyuarat Kerajaan bertarikh 12.4.2011 yang membatalkan kelulusan pemberian milikan 116 ekar tanah di Kampung Kelingsing dan Kampung Jambu di Mukim Dengkil, Daerah Sepang, Selangor secara penswastaan bagi tujuan
B pembangunan bercampur dan kelulusan dasar untuk pembangunan bercampur secara penswastaan kepada pemohon dibatalkan.

(iii) OM No. 25-86-2011

(a) bahawa keputusan Majlis Mesyuarat Negeri bertarikh 4.4.2011 yang membatalkan pemberi milikan 116 ekar tanah di Kampung
C Kelingsing dan Kampung Jambu, Mukim Dengkil, Daerah Sepang, Selangor secara penswastaan bagi tujuan pembangunan bercampur dan kelulusan untuk pembangunan bercampur secara penswastaan kepada pemohon dibatalkan.

Background Facts

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[4] The background facts leading to the present appeals have been set out by the learned judge in his judgment and are briefly as follows:

[5] On 26 May 1999 the Selangor State Government (the State Government) approved in principle the alienation of 116 hectares of state
E land in Kampung Kelingsing and Kampung Jambu, Mukim Dengkil, Sepang, Selangor (the said land) to the appellant to carry out mixed development.

[6] However, part of the said land was occupied by an Orang Asli settlement comprising of some 11 families (Orang Asli). Between 1999 and 2003, a series of meetings were held between the appellant and various state
F government agencies including representatives of the Orang Asli to resolve the issue of relocating and resettlement of the Orang Asli including the payment of compensation.

[7] Sometime in 2003 the appellant applied for the alienation of the said land *vide* NLC 53 Pin 1/86 in accordance with the plan annexed to the
G Borang (PMSB-4, pp. 149-159 of jld. 3, Bah. C of the Record of Appeal (ROA)).

[8] Further meetings were held between all parties involved in the proposed development of the said land to resolve the issue of the 'Orang Asli' occupying part of the said land.

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[9] Arising out of the said meetings, the appellant submitted a proposal to relocate and pay compensation to the Orang Asli.

[10] At a meeting on 14 January 2008 attended by representatives of the relevant State Government agencies and the appellant, the appellant was
I asked to pay the premium for the said land to the second respondent on condition that title will not be issued to the appellant until the execution of a privatisation agreement between the State Government and the appellant

and the resolution of the issue relating to the Orang Asli occupying part of the said land. (see minutes of the meeting PMSB-12, pp. 219-222 jld. 3, Bah. C, ROA).

[11] On 7 March 2008, the appellant was granted planning approval by the Majlis Perbandaran Sepang (PMSB-13, pg. 223, jld. 3, Bah. C, ROA).

[12] On 28 March 2008, the Sepang Land Office (the second respondent) issued a notice in Form 5A for "Pembayaran Premium Sementara" and "Cukai Bagi Tahun Pertama" amounting to RM8,715,755 (PMSB-14, pp. 225-226, jld. 3, Bah. C, ROA).

[13] On 14 August 2008, the new Selangor State Government through its Menteri Besar Tan Sri Khalid Ibrahim informed the appellant that they should resolve the issue relating to the Orang Asli without involving the State Government (PMSB-16 at p. 233, jld. 3, Bah. C, ROA).

[14] Between July 2008 to October 2009, the appellant forwarded several proposals to the Menteri Besar of Selangor to settle the issue relating to the relocation and compensation to be paid to the Orang Asli occupying part of the said land (PMSB-17, pp. 234-264, jld. 3, Bah. C, ROA).

[15] At the same time the appellant also urged the State Government to immediately issue the title to the said land to the appellant to enable it to proceed with the development of the land.

[16] On 28 February 2011, the second respondent issued a letter to the appellant notifying them of the State Executive Council's decision on 9 February 2011 (referred to by the appellant as the first decision) rejecting the appellant's application for alienation of the said land due to protests from the Jawatankuasa Kemajuan dan Keselamatan Kampung (JKKK) Kampung Orang Asli Jambu, Bakok dan Kelingsing (PMSB-19, p. 266, jld. 3, Bah. C, ROA).

[17] On 10 March 2011, the appellant wrote to the Menteri Besar Selangor to appeal against the decision of the State Executive Council on 9 February 2011.

[18] On 23 March 2011, a meeting was held between, amongst others, representatives of the appellant, the office of the Menteri Besar as well as the Orang Asli including its patron, to discuss matters relating to the relocation of the Orang Asli occupying part of the said land and the payment of compensation to them. No decision was achieved at the meeting except to maintain the *status quo*.

[19] On 26 March 2011, another meeting was held, chaired by the representative from the Menteri Besar's office and attended by the appellant and the patron of the Orang Asli.

[20] At the said meeting the patron of the Orang Asli confirmed that the Orang Asli occupying part of the said land have agreed to relocate and accept the compensation if the appellant were to fulfil their requests and demands set out in the minutes of the meeting of 26 March 2011, which requests and demands were accepted by the appellant in the same meeting.

[21] Following the agreement reached at the said meeting the appellant on 11 April 2011 wrote to the member of the State Executive Council concerned regarding its proposed settlement and compensation to the Orang Asli with copies extended to amongst others, the Menteri Besar.

(see PMSB-19, PMSB-20, PMSB-21 and PMSB-23 at pp. 267, 270-272, 273-275 and 276-278).

[22] However *vide* letter dated 13 April 2011 from the Timbalan Setiausaha Kerajaan (Pembangunan) the appellant was informed, *inter alia*, of the decision of the State Executive Council on 12 April 2011 (referred to by the appellant as the second decision) revoking the approval of alienation of the said land by way of privatisation for the purpose of mixed development and the approval in principle for mixed development *via* privatisation on the ground that there were still objections from the Jawatankuasa Kemajuan dan Keselamatan Kampung (JKKK) Orang Asli and no resolution of the Orang Asli issue have been achieved. (see PMS 13-24, pp. 290-291 jld. 3, Bah. C ROA).

[23] On 4 May 2011, the appellant filed two appeals under s. 418 of the National Land Code (NLC) against the first and second decision *via* OM No. 25-63-2011 and OM No. 25-64-2011 respectively.

[24] On 4 April 2011, the State Executive Council confirmed their decision (referred to by the appellant as the third decision) to revoke the approval to alienate the said land and to return the premium and rent paid by the appellant (exh. PMSB-24, pp. 290-291 jld. 3, Bah. C ROA).

[25] The aforesaid decision was received by the appellant on 12 May 2011 *vide* letter dated 28 April 2011 from the District and Land Office of Sepang. (the second respondent).

[26] Pursuant thereto the appellant filed another appeal against the third decision on 17 June 2011 at the Shah Alam High Court *via* OM No. 25-86-2011.

The Said OMs

[27] As quite correctly pointed out by the learned judge in his judgment the appellant filed the said OMs to appeal against the decisions of the State Executive Council made on the 9 February 2011, 4 April 2011 and 12 April 2011.

[28] The said OMs were filed under s. 418 of the NLC which provides for appeals against the decision of the State Director, the Registrar or any Land Administrator.

[29] However what is undisputed in the present case is that the decision to revoke the approval for development and the approval for alienation of the said land to the appellant was made by the State Executive Council, not the State Director nor the Registrar or the Land Administrator.

[30] The decision on 9 February 2011 (the first decision) was communicated to the appellant by the second respondent whilst the decision on the 12 April 2011 (the second decision) was extended to the appellant by the Timbalan Setiausaha Kerajaan (Pembangunan) on the following day, that is on the 13 April 2011 and copied to the second respondent.

[31] The third decision on the 4 April 2011 contained in letter dated 28 April 2011 from the second respondent was extended to the appellant on 12 May 2011.

[32] Thus whilst the three decisions appealed against were essentially that of the State Executive Council's, these decisions were communicated to the appellant by the second respondent.

[33] Further although there appear to be three separate decisions made by the State Executive Council on three different dates, these decisions were essentially the same and gave rise to the same issue as we shall see later in the judgment.

[34] In this regard we agree with the learned judge that the decision on the 12 April 2011 must be deemed to be the final decision as it was the most comprehensive and was officially communicated to the appellant the day after the decision was made, that is, on 13 April 2011.

[35] The said OMs were initially dismissed by the learned Judicial Commissioner (JC) before whom it was first heard. The learned JC was of the view that as the appellant was appealing against the decisions of the State Executive Council, the proper mode to challenge the decisions would be by way of judicial review under O. 53 of the Rules of the High Court (RHC) and not by way of appeal under s. 418 of the NLC.

[36] On appeal however, the learned JC's decision was overturned by the Court of Appeal. The said OMs were then reverted to the High Court for hearing before the learned judge.

Decision Of The High Court

[37] In the High Court the learned judge found that the main issue raised by the said OMs was as follows:

A Whether the State Authority (as represented by the State Executive Council) has the power to revoke the approval for alienation of the said land after premium and rent has been paid and accepted by the respondents.

[38] The learned judge held that he was bound by the Federal Court B decision in *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Satu Lagi* [2011] 4 CLJ 729 which held that by virtue of s. 78(3) of the NLC alienation of land is effective only upon registration and until such registration the said land remains state land although its alienation has been approved by the State Authority. Thus the learned judge found as follows:

C Walau pun perayu telah membayar premium bagi tanah pembangunan terlibat, perayu masih belum didaftarkan sebagai pemilik tanah tersebut. Seksyen 78(3) Kanun menyatakan tanah yang diluluskan bagi pemberian milikan masih terus kekal menjadi tanah negeri selagi tanah tersebut belum didaftarkan di atas nama pemiliknya. *Berdasarkan kepada peruntukan tersebut pihak berkuasa negeri mempunyai kuasa bagi membatalkan keputusan* D *memberi milikan atau tidak meneruskan pemberian milikan tanah kepada perayu/ pemohon walau pun premium ke atasnya sudah dibayar melalui Borang 5A selagai pendaftaran hak milik belum dibuat*. Dengan yang demikian hak ekpektasi atau jangkaan munasabah perayu tidak boleh mengatasi kuasa-kuasa statutori yang diberikan kepada pihak berkuasa negeri yang terdapat di bawah Kanun Tanah Negara. E

(emphasis added)

[39] The learned judge also found that the State Executive Council's decision in cancelling the approval for alienation was not made *mala fide*:

F Mahkamah ini tidak mendapati keputusan penolakan pemberian milikan tanah tersebut adalah merupakan suatu yang bersifat *mala fide* oleh pihak Majlis Mesyuarat Kerajaan Negeri (MMK) atau pihak berkuasa negeri.

[40] His Lordship further held that the role of the first and second respondents in this present case was merely to extend the decision of the State Executive Council to the appellant and to receive the premium on behalf of G the State Authority. Matters relating to the decision to alienate state land do not fall within the jurisdiction of the first or second respondent.

Submission On Appeal

[41] Before us learned counsel for the appellant sought to distinguish *North* H *East Plantations* (*supra*) on two grounds:

[42] Firstly, *North East Plantations* was heard not by way of an appeal under s. 418 of the NLC but by way of judicial review under O. 53 of the RHC. The principles of judicial review differ from that of an appeal under s. 418 of the NLC. I

[43] Learned counsel submitted that the High Court has wider powers when hearing an appeal than in an application for judicial review. When hearing an appeal under s. 418 of the NLC, the High Court has power to re-examine findings of fact and substitute its own findings for those of the body whose decision is appealed against (*Attorney General v. Ryan* [1980] AC 718).

[44] In this regard it was the appellant's contention that the High Court ought to have re-examine the evidence before the court and consider whether on the facts it was reasonable for the State Executive Council to revoke the approval for alienation.

[45] In this case it was not disputed that the appellant had liaised and had several discussions with all the relevant departments and submitted a concrete proposal incorporating the demands and requests of the Orang Asli.

[46] Having done all that, it was learned counsel's submission that it was not reasonable for the State Authority to revoke the approval for alienation on the ground that the appellant had failed to resolve the issue of relocation and compensation for the Orang Asli.

[47] Secondly, unlike in *North East Plantations* where the offer of payment of premium was rejected by the State, the appellant here has paid both the premium and the rent in respect of the said land (see exh. PMSB-15, *supra*).

[48] Hence once premium and rent was paid, it was mandatory for the second respondent to prepare, register and issue a qualified title to the said land in favour of the appellant. The appellant relied on s. 180 and s. 80(3) of the NLC.

[49] Section 180 of the NLC reads as follows:

> Section 180 NLC
>
> (1) Where approval of the State Authority to alienation of any land whether under this Act or under the provisions of any previous land law has been given, subject to sub-section (3) of section 80, documents of qualified title shall be prepared, registered and issued by the Land Administrator or Registrar, as the case may be.

whilst s. 80(3) of the NLC states in the following terms:

> Section 80(3) of NLC
>
> Subject to subsection (2) of section 81, upon the approval of the alienation of any land by the State Authority under this Act and upon payment of all fees the Registrar shall prepare, register and issue a qualified title in respect of the land.

Section 81(2) of the NLC stipulates that:

> (2) As soon as may be after any sums have become due in respect of any land by virtue of subsection (1), the Land Administrator shall, by notice in Form 5A, require the intended proprietor to pay them to him within

A the time specified in that behalf in the notice; and if any such sum is not so paid within the specified time, the approval of the State Authority to the alienation shall thereupon lapse.

[50] Learned Senior Federal Counsel (SFC) for the respondent in defending the learned judge's decision disagreed with the appellant's contention that
B *North East Plantations* is distinguishable on the two grounds stated above. Relying on a slew of cases, namely, *Dr Ti Teow Siew & Ors v. Pendaftar Geran-Geran Tanah Negeri Selangor* [1981] CLJ 134A; [1981] CLJ (Rep) 142; *Sidek Hj Muhamad & Ors v. The Government of the State of Perak & Ors* [1982] CLJ 244; [1982] CLJ (Rep) 321; *Suharta Development Sdn. Bhd. v Ho Lik Sdn. Bhd.*
C [1994] 1 CLJ 407 and culminating in the Federal Court decision of *North East Plantations* (*supra*), learned SFC reiterated the legal position established by the aforesaid cases in answer to the issue before the court, that is, by virtue of s. 78(3) of the NLC, the alienation of state land shall only take effect upon registration of a register document of title; and notwithstanding that its
D alienation has been approved by the State Authority, the land remains state land until registration under the Code.

[51] The fact that the respondent accepted the payment of premium and rent does not change the legal position that so long as the said land is not registered in the appellant's name the State Government has the power to
E revoke the previous alienation as the said land remains state land.

[52] Therefore whether the challenge to the State Authority's decision is by way of judicial review or by way of an appeal under s. 418 NLC the legal position *vis-a-vis* the power of the State Authority to revoke a previous approval for alienation remains the same.

F **[53]** As regards the second ground relied on by the appellant to distinguish *North East Plantations* from the present case, again *vis-a-vis* the power of the State Authority to revoke a previous approval for alienation after premium and rent has been paid, learned SFC relied on the judgment of the Federal Court in the aforesaid case in particular the following passage to maintain
G that the legal position remains unchanged:

> Kami juga ingin mengulangi kenyataan bahawa *selagi ia (hak milik) tidak didaftarkan mengikut s. 78(3) KTN, Perayu tidak berhak ke atas lapan lot tanah tersebut. Memandangkan tanah tersebut masih lagi milik Kerajaan Negeri maka Kerajaan Negeri berhak membatalkan kelulusan yang diberikan* dan seterusnya
> H berhak untuk menolak apa-apa pembayaran Borang 5A serta berhak untuk mengarahkan supaya bayaran yang dibuat oleh perayu tidak diterima dan dikembalikan kepada perayu.
> (per Alauddin Mohd Shariff PMR, pg. 742).
>
> (emphasis aded)

I **[54]** As to learned counsel for the appellant's contention that it was mandatory for the respondents to issue and register the document of title to the appellant once premium and rent has been paid, learned SFC again

referred to *North East Plantations* where in respect of the Land Administrator's power under s. 80(3) of the NLC, the Federal Court expressed the following view:

> Perkataan 'shall' yang terdapat di dalam s. 80(3) KTN merupakan prosedur pentadbiran atau 'administrative steps' yang mesti dilaksanakan oleh Pentadbir Tanah selepas kelulusan diberikan oleh Pihak Berkuasa Negeri atau MMKN. Malah perkataan 'shall' juga terdapat di dalam ss. 81 hingga 92 KTN. Ini bermakna prosedur yang sama hendaklah diikuti oleh Pentadbir Tanah. Antara lain termasuklah pembayaran Borang 5A, pengukuran tanah, fee yang kena dibayar dan pengeluaran geran hak milik.
>
> *Namun demikian, pada hemat kami, ini tidak bermakna bahawa MMKN tidak boleh membatalkan kelulusan yang telah diberikan dan apabila kelulusan dibatalkan dan pembayaran Borang 5A tidak diterima maka 'administrative steps' yang dinyatakan di dalam ss. 81-92 KTN tidak lagi perlu dipatuhi.*
>
> Justeru, hujah perayu bahawa mereka berhak secara automatik mendapat hak milik tanah setelah kelulusan diberi oleh MMKN sama sekali bertentangan dengan peruntukan KTN khususnya s. 78(3) yang memberi kuasa secara tersirat kepada Pihak Berkuasa Negeri membatalkan kelulusan yang telah diberi kepada perayu.
>
> *Di bawah s. 80(3) Pentadbir Tanah bukan sahaja menjalankan kuasa 'perfunctory' tetapi juga tertakluk kepada arahan Pihak Berkuasa Negeri. Sekiranya Pihak Berkuasa Negeri telah meluluskan sesuatu permohonan tanah dan segala bayaran telah disempurnakan maka Pentadbir Tanah hendaklah menjalankan tugas beliau di bawah seksyen tersebut. Sebaliknya jika Pihak Berkuasa Negeri telah membatalkan kelulusan yang telah diberikan sebelum ini walaupun bayaran telah dibuat, maka Pentadbir Tanah tidak lagi boleh menjalankan kewajipannya di bawah seksyen tersebut.*
>
> (emphasis added)

[55] For these reasons, learned SFC urged the court to dismiss the appeal with costs.

Our Decision

[56] The primary issue before the court is whether the State Executive Council or the State Authority has the power to revoke an approval for alienation of state land after payment of premium and rent made by way of Form 5A has been made and accepted (by the Land Administrator).

[57] In our view the learned judge was correct in holding that he was bound by the decision of the Federal Court in *North East Plantations* (*supra*) which had decided on the very same issue confronting the court in the present case.

[58] In *North East Plantations* the main question of law posed before the Federal Court was "whether the NLC confers power upon the State Government to revoke permission for alienation granted by a previous State Government."

[59] The brief facts of the case as set out in the headnotes were as follows:

[60] The appellant, *North East Plantations* applied to the State Government for alienation of 11 lots of land amounting to 10,000 acres in a forest reserve area in the district of Dungun. The appellant's application was approved, resulting in three lots of land being issued with documents of title upon the appellant paying premium.

[61] For the remaining eight lots the premium amounted to RM2,052,465.30 and Form 5A under s. 80(3)of the NLC was issued to the appellant for payment of the premium. The appellant attempted to pay the premium but the first respondent (the Land Administrator of the district of Dungun) refused to accept payment.

[62] The appellant tried again to pay but was informed that the State Executive Council had decided to reject the payment of the premium and had consequently revoked the alienation of the land that was approved to the appellant in respect of the said lots. The appellant then filed an application for judicial review in the High Court for, *inter alia*, a declaration that the decision of the State Executive Council to revoke the alienation of the land that was approved to the appellant, be declared null and void.

[63] The Federal Court in dismissing the appeal held, as regards the main question of law (*supra*):

> Kami bersependapat bahawa keputusan tersebut adalah sah di sisi undang-undang kerana *ianya melibat kawasan yang belum didaftar hak milik kepada perayu iaitu 8 lot yang telah dikeluarkan Notis 5A kepada perayu* melibatkan lot-lot PT 1548, 1549, 1558 dan 1559 di Mukim Besol, Dungun dan PT 3764, 3765 dan 3767 di Mukim Hulu Paka (8 lot tersebut).
>
> (emphasis added)

[64] In arriving at the aforesaid decision, the Federal Court referred to s. 78(3) of the NLC and cited with approval Hashim Yeop A. Sani J's (as he then was) decision in *Dr Ti Teow Siew & Ors v. Pendaftar Geran-Geran Tanah Negeri Selangor* (*supra*) on the interpretation of that section.

[65] Section 78(3) of the NLC provides as follows:

> The alienation of State Land shall take effect upon the registration of a register document of title thereto pursuant to the provisions referred to subsection (1) or (2), as the case may be; and, notwithstanding that its alienation has been approved by the State Authority, the land shall remain State Land until that time.

[66] Hashim Yeop A Sani J in interpreting s. 78(3) stated categorically as follows:

> Registration is central in the Torrens System and in any statute like the National Land Code which carries the Torrens System ...
>
> In my opinion the word 'alienation' is crucial for the proper interpretation of s. 105. Section 78(3) of the Code determines when an alienation of State Land shall take effect and it is clear from that subsection that alienation takes effect upon registration ...
>
> It is to be observed in the second limb of that subsection that until the date of registration the land shall remain State Land.
>
> Thus it is clear in law that for the purposes of the National Land Code the first applicant was never the 'proprietor' of the said property prior to the date of registration. There can be no question therefore of any property in the said land being vested in the first applicant prior to the date of registration although the said land was approved for alienation as stated in the letter of the Assistant Collector of Land Revenue, Petaling Jaya, addressed to the first applicant informing him of the approval for alienation and setting out the fees to be paid and setting out also the express conditions and the restrictions in interest.

[67] In endorsing the above view, the Federal Court in *North East Plantations* held as follows:

> Berdasarkan kes di atas serta mengikut penilaian kami *jelas bahawa perayu bukanlah pemilik bagi lapan lot tanah tersebut kerana perayu belum didaftarkan sebagai pemilik tanah tersebut apabila keputusan dibuat oleh Kerajaan Negeri untuk membatalkan kelulusan permohonan perayu.*
>
> (emphasis added)

[68] The principle of law expounded by the Federal Court above applies equally here as the facts are almost on all fours with the present case.

[69] In view of that we are unable to agree with learned counsel for the appellant's attempt to distinguish the present case from *North East Plantations* on the two grounds stated earlier.

[70] As submitted by learned SFC the fact that the present case is filed by way of an appeal under s. 418 of the NLC and not by way of judicial review under O. 53 of the RHC as was the case in *North East Plantations* does not change the legal position as pronounced by the Federal Court above.

[71] The learned judge in any event had, in his judgment undertaken a thorough re-examination of the facts of the case and came to the conclusion that the State Executive Council's decision to revoke the approval of alienation of the said land to the appellant was not made '*mala fide*' nor was it unreasonable.

[72] We set out below the learned judge's reasons for arriving at that conclusion:

A Di dalam kes ini jangka masa yang panjang yang telah diambil di dalam perancangan pembangunan bercampur bagi tanah-tanah yang melibatkan pertempatan orang asli telah diberi pertimbangan yang mendalam dari segenap aspek oleh pihak berkuasa negeri. Ini dapat dilihat daripada kronologi perundingan yang mengambil tempat sejak tahun 1999 sehinggalah akhirnya Majlis Mesyuarat Kerajaan Negeri Selangor pada
B 3.4.2011 mengambil keputusan membatalkan kelulusan pembangunan dan pemberi milikan tanah-tanah terlibat serta keputusan mengembalikan semula bayaran premium dan cukai tahun pertama bagi tanah yang dimaksudkan yang telah dibayar oleh perayu. Majlis Mesyuarat Kerajaan Negeri telah memberikan sebab pembatalan kelulusan pembangunan dan pembatalan pemberian milikan tanah-tanah tersebut. Alasan utama adalah
C disebabkan terdapatnya tentangan atau bantahan oleh pihak orang asli terhadap pembangunan dan pemberian milikan tanah-tanah tersebut yang akan melibatkan penempatan semula orang asli terlibat yang tidak dapat diselesaikan. Perjanjian penswastaan yang menjadi pra-syarat sebelum pengeluaran suratan hak milik juga belum ditandatangani oleh pihak-
D pihak. Mahkamah ini tidak mendapati keputusan penolakan pemberian milikan tanah tersebut adalah merupakan suatu yang bersifat *mala fide* oleh pihak Majlis Mesyuarat Kerajaan Negeri (MMK) atau pihak berkuasa negeri.

We see no reason to interfere with the learned judge's finding.

E **[73]** As regards the second distinguishing factor relied on by the appellant, that, unlike in *North East Plantations* where the State Government rejected the payment of premium offered by the appellant, the respondents here had accepted the payment of premium and rent as set out in Form 5A, we wholly agree with the learned judge when he said:

F Maka itu sama ada premium tanah telah dibayar atau belum dibayar ianya tidak mengubah prinsip undang-undang yang mantap bahawa pihak berkuasa negeri mempunyai kuasa untuk membatalkan pemberian milikan selagi suratan hak milik tanah dan pendaftaran suratan hak milik belum dikeluarkan.

G **[74]** Finally as to learned counsel for the appellant's submission that the first and second respondents are mandatorily obliged to issue and register the document of title in the appellant's name once premium and rent in respect of the said land has been paid, as submitted by learned SFC, this issue has been extensively dealt with by the Federal Court in *North East Plantations* as
H seen from the passage in the judgment quoted by learned SFC above. At the risk of repeating what has been quoted by learned SFC, we reproduce below the relevant part of the Federal Court's judgment on this issue which sums up very clearly the legal position as regards the first and second respondents' powers under s. 80(3) of the NLC in the light of the factual matrix of the
I present case:

Di bawah s. 80(3) Pentadbir Tanah bukan sahaja menjalankan kuasa 'perfunctory' tetapi juga tertakluk kepada arahan Pihak Berkuasa Negeri. Sekiranya Pihak Berkuasa Negeri telah meluluskan sesuatu permohonan

tanah dan segala bayaran telah disempurnakan maka Pentadbir Tanah hendaklah menjalankan tugas beliau di bawah seksyen tersebut. Sebaliknya jika Pihak Berkuasa Negeri telah membatalkan kelulusan yang telah diberikan sebelum ini walaupun bayaran telah dibuat, maka Pentadbir Tanah tidak lagi boleh menjalankan kewajipannya di bawah seksyen tersebut.

(emphasis added)

[75] We also think it pertinent to reproduce below the judgment of the High Court in the case of *Syarikat Perusahaan Seri Connolly Sdn Bhd v. Pengarah Tanah dan Galian, Negeri Perak & Anor* [1998] 2 CLJ Supp 517 at p. 525 which was relied on by the Federal Court when dealing with this issue in their judgment in *North East Plantations*.

Section 80(3) it is clear does not impose on the Registrar a duty to make a decision whether or not he should issue the title but (as the Learned Legal Adviser has correctly submitted) merely a perfunctory duty to prepare, register and issue the title after the State Authority has alienated the land and all the requisite fees have been paid. His refusal or omission to issue the document of title rightly or wrongly is therefore clearly not appealable. The appellant's redress, if any, is not an appeal under s. 418 but an order of *mandamus* under the Specific Relief Act 1950 to compel a public servant to perform his duty … But even assuming that the Registrar's refusal or omission to issue the title is appealable, his decision is still necessarily limited to what he could do under the circumstances. One must bear in mind that land may only be alienated by the State Authority acting under s. 76 of the National Land Code. It is only upon approval of alienation that the Registrar can act under s. 80(3) of the National Land Code to issue a qualified title to the successful applicant and he can only act in accordance with the decision of the State Executive Council. Given that in the instant case the State Executive Council had on 21 December 1979 revoked its alienation of the original Lot 72656 when it approved the alienation of the 1462 lots to the appellant, it is clearly not within the power of the Registrar now to issue a qualified title for lot 72656.

(emphasis added)

[76] Based on the above pronouncement the appellant's submission on this issue is clearly untenable.

[77] We further find that learned counsel for the appellant's reliance on the case of the *Government of the State of Negeri Sembilan v. Yap Chong Lan & Ors & Another Case* [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144 and *Pow Hing & Anor v. Registrar of Titles, Malacca* [1980] 1 LNS 120; [1982] 1 MLJ 155 is misconceived as the former concerns the revocation of reservation of land for public purpose under s. 64(2) of the NLC whilst the latter deals with forfeiture of land under s. 97 to s. 100 of the NLC. In both instances there is a specific procedure laid down in the said sections before a reservation of land can be revoked or land can be forfeited as the case may be.

A **[78]** In both these cases the Federal Court held that the provisions in s. 64(2) of the NLC in the case of *Yap Chong Lan* (*supra*) and s. 97(2) to s. 100 in the case of *Pow Hing* are mandatory requirements and must be complied with before a state land reservation can be revoked in case of the former and before land belonging to a registered proprietor in case of the B latter, can be forfeited. No such mandatory provisions are found in the NLC in respect of the State Authority's power to revoke a previous alienation or previous approval for alienation for the simple reason as decided by *North East Plantations* that by virtue of s. 78(3) of the NLC, land which has been approved for alienation but not yet registered remains for all intents and C purposes state land.

[79] For the reasons set out above we find that the learned judge had not misdirected himself in law or in fact in arriving at his decision. The appeal is therefore dismissed with costs and the deposit is refunded accordingly.

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